

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3985 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

ABUDLHUSEIN SHAIKH ABDUL KADAR

Versus

IDRIS ALIBHAI KINKHABWALA

Appearance:

MR SB VAKIL for Petitioner

MR DJ BHATT for Respondent No. 1

MR HL JANI for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/12/97

ORAL JUDGEMENT

#. Challenge has been made by petitioner to the order of the Assistant Charity Commissioner, Surat Division, Surat, in Misc. Application No.1 of 1983 in its purporting exercise of powers conferred under section 68(e) of the Bombay Public Trusts Act, 1950 (hereinafter referred to as the 'Act 1950').

#. The facts of the case, in brief, are that this petition is filed by Dawat Properties Trust, a Trust registered under the provisions of the Act 1950, through its Manager against the aforesaid impugned order. The respondent No.1 filed an application to the Assistant Charity Commissioner, Surat, and prayer has been made therein to call for books of accounts, bank books, deed, minute book of the petitioner-Trust for the years 1970 to 1983 etc. in the office of the Assistant Charity Commissioner, Surat, for inspecting those books etc. by defendant No.1 alongwith his auditor. Before the Assistant Charity Commissioner, the petitioner-Trust has made a statement that the Trust has no objection in case the Assistant Charity Commissioner himself calls for all the relevant record of the Trust and examines/inspects the same.

#. During the course of arguments, the learned counsel for the petitioner reiterated that prayer before this Court and further stated that in case anything objectionable is found in the accounts of the Trust and any of the Trustees is found to be indulging in the activity of misfeasance or misappropriation or act of malafides in the Trust or dealing with the property of the Trust with some oblique motive of gaining for himself, the Assistant Charity Commissioner, Surat, may be given a free hand to take appropriate action against the petitioner, but the respondent No.1 who is litigating against the Trust should not have been permitted to go for inspection of the records of the Trust. The learned counsel for the petitioner-Trust has next contended that if we go by the averments made by respondent No.1 in the application annexure 'C' filed by him before the Assistant Charity Commissioner, there is no allegation of any misfeasance or misappropriation or embezzlement or otherwise acting detrimental to the interest of the Trust by the Trustees. It is a case where he is finding some fault or errors with the account of the Trust or with the auditor's report. The learned counsel for the petitioner lastly contended that the accounts of the Trust are being audited by the auditors from time to time.

#. The learned counsel for respondent No.1, on the other hand contended that the respondent No.1 has a right to pray for inspection of the record of the Trust under section 68(e) of the Act 1950. In support of this contention he placed reliance on decision of this Court in the case of Quazi Reziuddin Badruddin v. Mahmad Amin Haji Abdulkadar & Ors., reported in IX GLR 93.

#. I have given my thoughtful considerations to the submissions made by learned counsel for the parties.

#. It is true that the Assistant Charity Commissioner has power to pass orders to allow inspection of accounts or other documents/ books of the Trust to a person who has prayed for the same under section 68(e) of the Act 1950, but while exercising such powers, all care should be taken by the Assistant Charity Commissioner to see that a person who has prayed for such inspection has not come before him only to have a fishing inspection of the record to find something for making out some case against the Trustees. Further while dealing with such matter, the Assistant Charity Commissioner should take care to see that the persons who are otherwise having some ill-will or enmity against the Trustees may not make this provision to be a battle field for their personal disputes or grievances or enmity.

#. Section 68 of the Act 1950 though nowhere provide that only aggrieved persons could have applied for inspection to the accounts and documents and books of the Trust but anybody who is altogether a stranger to the Trust should not have been permitted the inspection of the documents of the Trust aforesaid. It is understandable that in case the respondent No.1 has come up with some serious allegation of misappropriation or misfeasance or embezzlement of the properties of the Trust by the Trustees or where the Trustees are malafidely dealing with the properties of the Trust for their own benefits, then the respondent No.1 has some justification to apply for inspection of documents, i.e. account books, vouchers, bills etc. or other books of the Trust, but not otherwise. I have gone through the contents of the application of respondent No.1 made before the Assistant Charity Commissioner and therefrom I find that in fact it is only in the form of calling of some explanation by the respondent No.1 from the Trustees or particularly from the Auditor of the Trust. Many irrelevant things have also been put into the application and when those things have not been specifically explained, how far inspection of those things of the record of the Trust is necessary. The bonafides of the Trust cannot be doubted where it has very frankly submitted before the Assistant Charity Commissioner, Surat, that he may go into and inspect the records of the Trust. Further before this Court also, the Trust has come very fairly and its learned counsel Shri S.B.Vakil made a statement before this Court that still the Trust has no objection in case the Assistant Charity Commissioner, Surat, inspects the relevant record of the

Trust and the Trust will make the same available to him. The Trust has further no objection, in case something is found objectionable in the record, to take appropriate action by the authority in accordance with law. The very fact that the respondent No.1 has prayed for inspection of documents from the year 1970 onwards shows that he has not come bonafide before the Assistant Charity Commissioner. Similarly, the petitioner-Trust has stated as a fact that the respondent No.1 has been litigating against the Trust and if this is the fact then the bonafides of respondent No.1 in its action of resorting to the provisions of Section 68(e) of the Act 1950 are also doubtful. The contents of the application annexure 'C' are also making it clear that the respondent No.1 has not acted bonafide in the present case and as such the possibility of filing the said application with some oblique motive cannot be ruled out. So far as the case on which reliance has been placed by learned counsel for respondent No.1 is concerned, it is suffice to say that each case has to be decided on its own facts and as I am deciding this case only on its own facts, it is not necessary to discuss the decision of this Court relied upon by learned counsel for respondent No.1.

#. Taking into consideration the totality of the facts of this case, the order of the Assistant Charity Commissioner, Surat, impugned in this Special Civil Application cannot be allowed to stand and the same is set aside. However, it is made clear that the Assistant Charity Commissioner, Surat, is at liberty to call for relevant records of the Trust and to inspect the same in case he finds something objectionable in the dealing of the Trust property by the Trustees, and take appropriate legal action in accordance with law. The petitioner-Trust is further directed to produce before the Assistant Charity Commissioner, Surat, whatever relevant records, if any, demanded by the said authority. Rule is made absolute in terms aforesaid with no order as to costs.

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(sunil)